IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 462 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDRAVIRSINH GAJARAJSINH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 462 of 2001
Mr M.R.Y. Radhanpurwala for MR SHAKEEL A QURESHI for Petitioner No. 1
Mr B D Desai, APP for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/02/2002

ORAL JUDGEMENT

The petitioner herein has preferred this revision

application under section 397 read with section 401 of Criminal Procedure Code, 1973 (for short, 'the Code') challenging the judgment and conviction orders recorded against him by the two courts below. The petitioner along with two other accused persons were prosecuted before the learned JMFC, Kalol, Mehsana District in criminal complaint no.214/2000 for offence punishable under section 120-B of IPC and under section 25(1)(A) of the Arms Act. It was alleged against the petitioner and other accused persons that on 18.8.1999 at about 7.30 p.m. the petitioner and other persons were found running away on seeing the police near Khatraj road crossing and, therefore, the police suspected and hence they were chased. The petitioner and other two accused persons were apprehended and on personal search of the petitioner and other two accused, it was found that a country made pistol (tamancha) was in possession of the present petitioner and, therefore, the said weapon was seized by the police under panchnama and, thereafter the petitioner and other two accused were charged before the aforesaid court after completing the investigation and after following due process of law. The learned Magistrate framed charge against the petitioner and other two accused persons and at the end of the evidence recorded before him, the learned Magistrate found that the petitioner was guilty of offence punishable under section 25 of the Arms Act and, therefore, the learned Magistrate convicted him for the said offence and sentenced him to suffer S.I. for three years. The petitioner was further directed to pay fine of Rs.500/-. In default of payment of fine, he was required to undergo further S.I. for 10 days. At the same time, the learned Magistrate acquitted other two accused persons being petitioners no.2 and 3 before him.

2. Feeling aggrieved by the said judgment and conviction order of the learned Magistrate dated 7.7.2000, the petitioner herein preferred criminal appeal being Criminal Appeal No.39/2000 before the Sessions Court at Mehsana. The lerned Addl.Sessions Judge dismissed the appeal and confirmed and judgment and conviction order of the trial court by judgment and order dated 10.11.2000.

3. Feeling aggrieved by the judgments and orders of the two courts below, the petitioner has preferred this revision before this court. It has been contended by the petitioner herein that the evidence is not consistent and there is apparent illegality committed by the two courts below in the matter of appreciation of evidence on record. That the witnesses have given contradictory

versions on several aspects and they have not been properly considered by the trial court. That the investigation has been conducted by the police officer who was infomant also. That therefore, the proceedings were vitiated and that therefore, the judgments and orders of the two courts below are illegal and perverse. The petitioner therefore, prays that the present revision application be allowed and the aforesaid two judgments and conviction orders against the petitioners be set aside.

4. On receiving the revision application, notice was issued at first instance and subsequently, rule was issued. Mr B D Desai, learned APP appears on behalf of the State in response to the rule served. I have heard Mr M.R.Y.Radhanpurwala, learned Advocate for the petitioner appearing for Mr S A Qureshi, learned advocate. I have also heard Mr B D Desai, learned APP for the State.

5. Learned Advocate for the petitioner has argued the matter at length. He has pointed out that there are some contradictions in the evidence of record. It has to be taken into consideration here that the two courts have recorded concurrent findings of fact on the point that muddamal tamancha has been recovered from the present petitioner and he had no licence to hold such a weapon. In that view of the matter when the two courts below have recorded concurrent finding of fact, it would be difficult for this court to exercise revisional jurisdiction to interfere with the said finding of fact. The petitioner has to show that the judgments and orders of the two courts below are illegal and perverse and the findings of the two courts below are against the evidence at the first instance.

6. It has first been argued by the learned Advocate for the petitioner that the description of the weapon said to have been recovered by the petitioner is different. That at one stage, it has been referred as pistol, at the second stage it has been referred as revolver and at the third stage, it has been referred as tamancha. This cannot be treated to be a contradiction for any purpose. Tamancha is a vernacular word used in the subject matter of criminal prosecution against the petitioner. Pistol and revolver may be technically different. But the appearance would be same. Therefore, the witnesses may not be able to describe it in a proper way. There is no dispute that the weapon recovered from the petitioner is a country made pistol i.e. a Tamancha and it is not a revolver. Internal arrangement of the

revolver would be different from the internal arrangement of tamancha. However, when the witnesses have referred the weapon as a firearm, then in that case, it cannot be said that there is serious infirmity in the prosecution case so as to vitiate the trial totally.

7. It is then contended by the learned Advocate for the petitioner that the witnesses have given different names of the petitioner at different point of time. He has referred to evidence of Babuji at Exh.13 who is shown to be an unarmed Head Constable of Kalol in Mehsana District. It has been noticed that the name of the person concerned is shown to be Harvindersingh Yadav by this witness during the course of examination-in-chief. However, there appears to be some error on his part in referring name of the petitioner at the first instance. At the second instance, the witness has deposed before the trial court that the person from whom the tamancha was seized was Indravirsingh. Again at other places, he has referred the person concerned as Indravirsingh more than once. Therefore, it cannot be treated to be contradiction in the evidence of this witness.

8. Another aspect of the argument of the learned Advocate for the petitioner is that the witnesses have said that the incident took place at 5 o'clock in the evening and it is the case of the prosecution that the incident took place at 5.30 p.m. This is again not a material contradiction on material particulars. A difference of time of 30 minutes here or there would not illegalise the evidence of the witness and this cannot be said to be taken to be a serious infirmity fatal to the case of the prosecution.

9. It is then contended that PW 3 has referred in his evidence that on seeing the police the petitioner started running away and he was chased to a distance of 100 yards. Other witnesses have given different distances during the course of their evidence. After all different witnesses must have crossed different distances and the distance given by them during the course of their evidence is again approximate distance. Therefore, if the distance given by different witnesses is different, it would not go to the root of the case of the prosecution. Therefore, this contradiction in the evidence of the witnesses cannot be treated to be fatal to the case of the prosecution.

10. So far as the panch witnesses are concerned, their evidence has been recorded by the trial court. One of them is at Exh.16. It has been argued that this

witness has deposed before the trial court that nobody had called him yet he had gone voluntarily to the place of incident. Now it may be that the witness may have been passing by the side and he may have been invited to become a panch of the panchnama under which the tamancha in question was seized from the custody of the petitioner. This witness has positively stated in his evidence that on 18.8.1999 the police had called him at Khatraj road crossing as panch and in his presence the muddamal tamancha was seized from the custody of the petitioner. It is true that the witness has referred the muddamal weapon as 'gun' in his evidence. But again these are rustic village people who may not be able to distinguish a gun from a tamancha. However, he has identified the muddamal tamancha before the court. This shows tht even according to the evidence of this witness, the muddamal was seized from the possession of the petitioner in his presence. Another panch witness Pasabhai Somabhai at Exh.19 also gives evidence to the said effect. He has also deposed that the muddamal weapon was seized from the possession of the present petitioner in his presence. It is true that in cross examination, he has deposed that when he reached the spot, there were 50 persons present on the spot and the P.S.I. was dictating panchnama. At the same time, the witness has positively deposed before the Court that the muddamal was seized from the possession of the petitioner in his presence by the police. Therefore, by and large he has supported the evidence of other prosecution witness, PW 9, Kanti Parshottam has been examined at Exh.27. He has deposed that he had gone to call panch witnesses. However, other witness has said that one Babuji had gone to call panch witness. This is not a contradiction which would be treated to be material contradiction fatal to the case of the prosecution. It would be required to consider that the incident took place in August 1999 and the evidence was recorded in June, 2000. Therefore, even due to passage of time, the witness would commit some mistake in giving details about the facatual aspects because of the passage of time.

11. It has also been contended that the FIR was given by the police officer who is inivestigating the case. Looking to the nature of the offence and looking to the manner in which the accused has committed the offence and looking to the fact that the witnesses are by and large police officials and since it is not shown that some prejudice has been caused to the petitioner and when the defence of the petitioner has not been adversely affected, the aforesaid fact would not tilt balance in favour of the petitioner. Any way, the trial court has

considered the evidence of all the witnesses before it in a proper perspective and even the learned Addl.Sessions Judge who heard the appeal has also dealt with the evidence of the witnesses in details. No illegality is shown to have been committed in appreciation of evidence and, therefore, the judgment and conviction orders of the two courts below cannot be said to be illegal and perverse. The witnesses have deposed before the Court and therefore, the evidence has been legally appreciated by the two courts below. When there is no illegality in appreciation of evidence, it would not be open to this court to interfere with the finding of fact recorded by the two courts below. In that view of the matter, there appears to be no illegality committed by the two courts below in the appreciation of evidence and there is no merit in the present revision. It is, therefore, required to be dismissed.

12. For the foregoing reasons, this revision application is ordered to be dismissed and the judgment and conviction order recorded by the two courts below are confirmed. Rule discharged.

27.2.2002 [D P Buch, J.]
msp